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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 866

SUN OIL COMPANY, *Appellant,*

v.

STATE MINERAL BOARD, *Appellee,*

MISS ALICE J. MILLER, *Intervenor-Appellee.*

Appeal to the Supreme Court of the United States From the Supreme Court of Louisiana

STATEMENT AS TO JURISDICTION

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Appeal to the Supreme Court of the United States From the Supreme Court of Louisiana

---

JURISDICTIONAL STATEMENT IN ACCORDANCE WITH RULE 15 OF THE SUPREME COURT OF THE UNITED STATES

Appellant prays that jurisdiction be noted and that this appeal be duly heard by this Honorable Court.

CITATIONS TO OPINIONS BELOW

The opinion rendered by the Supreme Court of Louisiana on January 21, 1957, which said judgment modified the judgment entered by the said Court on December 10, 1956, is as yet unreported. Copies of the said opinions are however appended as provided in Sub-paragraph (h) of Rule 15 of the Rules of this Honorable Court.

JURISDICTION

The original decision of the Supreme Court of Louisiana was entered herein on December 10, 1956 (R. 53). A motion for rehearing was timely filed by appellant, and on January 21, 1957, (R. 61), the Court rendered a *per curiam* decision modifying the decision of December 10, 1956, and then denying a rehearing.

This is an appeal from a final decision of the Supreme Court of Louisiana where is drawn in question the validity of a statute of a State on the grounds of its being repugnant to the Constitution of the United States and the decision is in favor of its validity.

The Notice of Appeal to this Honorable Court was filed herein on February 14, 1957, in the Supreme Court of Louisiana.

This appeal is taken pursuant to 28 U.S.C.A. 1257 (2). A substantial federal constitutional question is involved under the principles of *Zucht* v. *King,* 260 U. S. 174, 176, 177, 43 S. Ct. 24, 25, 67 L. Ed. 194, 198 (1922) and the case does not come within the rule of *Equitable Life Assurance Society of the United States* v. *Brown,* 187 U. S. 308, 314, 23 S. Ct. 123, 125, 47 L. Ed. 190, 193 (1902) as the question presented is new and novel. All of this will hereinafter be shown in more detail and the citation of additional authority would be surplusage.

The validity of a statute of the State of Louisiana is involved and its text and citation is as follows—Act 513 of 1952, Page 1235 of the Acts of the State of Louisiana for the regular session of the year 1952, LSA-R. S. 30:181-188:

"To authorize the state mineral board to execute oil, gas or other mineral leases on land within the state of Louisiana owned in indivision by 500 or more persons, for the benefit of all of the owners thereof; to prescribe the procedure for making such leases; to provide for a ten percent deduction to defray expenses of state mineral board; and to further prescribe the handling of rentals, bonuses and royalties received by the state mineral board under any such leases.

"Be it enacted by the Legislature of the State of Louisiana:

"SECTION 1. Where any land lying within the State of Louisiana is owned in indivision by 500 or more persons, and the said land is not, and has not for a period of at least one year been, subject to a recorded oil, gas or mineral lease, granted by all of the owners of said land, any 50 co-owners of said land shall have the right to request in writing the State Mineral Board to lease said land for the benefit of all of the owners thereof.

"SECTION 2. Upon receiving such a request the State Mineral Board shall cause notice to be inserted in the official publication of the Parish in which said land is located and of the Parish of East Baton Rouge, requesting bids for an oil, gas and mineral lease on the said land, provided however, the State Mineral Board may require a deposit sufficient to cover the estimated cost of publication.

"SECTION 3. In publishing the said notices and in receiving the said bids, the State Mineral

Board shall follow the same procedure that it follows, from time to time, in the leasing of State lands for oil, gas and other mineral development as set forth in Title 30 of the Revised Statutes of 1950.

"SECTION 4. The State Mineral Board is hereby authorized to execute an oil, gas and other mineral lease to the bidder who, in the discretion of the State Mineral Board, has submitted the most favorable bid; provided that the lease shall be in the regular form then in use by the State Mineral Board in leasing State lands and shall not provide any less than a 1/8 royalty for the owners of the said land; and upon the said lease being signed by the State Mineral Board, it shall be binding upon all of the co-owners of the said land, and their heirs, executors, administrators and assigns.

"SECTION 5. Simultaneously with the filing of the request referred to in Section 1 of this Act, there shall be filed with the State Mineral Board a list showing the names and addresses, if known, of all the co-owners of the said land and the undivided interest of each. The information contained in said list shall be sworn to by not less than two persons other than co-owners. If the name and/or address of any co-owners are unknown, the fact shall be stated.

"SECTION 6. Any funds received under or on account of any such oil, gas or other mineral lease, as rental, bonus, royalty or otherwise, shall be distributed quarterly by the State Mineral Board in accordance with the said list, except that if the State Mineral Board receives a written notice in which the right of any person whose name appears on the said list is questioned, the State Mineral Board shall withhold payment of said amount until the right shall be settled either by judicial determination or compromise.

"SECTION 7. With respect to (a) any funds the right to which is in dispute, or (b) any funds payable to an unknown owner, the State Mineral Board shall have the right, respectively (a) to provoke a concursus in accordance with the prevailing law of this State; and (b) to deliver such amount to the public administrator of the Parish of East Baton Rouge, La.

"SECTION 8. The State Mineral Board shall be and it is hereby authorized to deduct from any funds received by it under any such leases executed hereunder an amount equal to ten percent of any and all funds received by it, the same to defray the costs and expenses in connection with the duties placed upon the State Mineral Board hereunder.

"SECTION 9. If any provision of this Act is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of the Act and the applicability thereof to other persons and circumstances shall not be affected thereby.

"SECTION 10. All laws or parts of laws in conflict herewith are hereby repealed."

QUESTIONS PRESENTED

The Legislature of the State of Louisiana enacted the statute identified above, i. e., Act 513 of 1952, which purports to give to the State Mineral Board of the State of Louisiana the authority to execute mineral leases on lands owned in indivision by 500 or more persons when any 50 or more of the co-owners of the said property have petitioned the said State Mineral Board to lease the subject property. Under the terms of the statute, any 50 co-owners can so petition if there has not been a lease by all of the co-owners for at least one year prior to the time of the petition. When such

a petition is filed, the State Mineral Board has the authority to proceed to lease the land in the same manner as if it was State-owned land. The statute further provides that upon said lease being signed by the said State Mineral Board, "it shall be binding upon all of the co-owners of the said land, and their heirs, executors, administrators and assigns". This lease then binds "all" of the co-owners of the land and the State Mineral Board retains ten per cent (10%) of any and all funds received by it under any such lease for its costs and expenses. A complete copy of the said Act has already been set out for convenience. It is, and has been, the contention of appellant that the said Act violated the following provisions of the Constitution of the United States—Amendment 5; Amendment 14, Section 1; Article I, Section 10 (together with violation of provisions of the Constitution of the State of Louisiana) in that (a) it deprives the landowner of his right to freely contract without compensation and subjects the interest of said landowner to a lease whether he wants to lease or not plus forcing him to pay a ten per cent (10%) commission to the State Mineral Board for doing something which may be entirely against the wishes of the said landowner; and (b) it deprives the owners of leases of undivided interests of their valid, and possibly quite valuable, contractual rights without compensation. For convenience we quote the indicated constitutional provisions:

Amendment 5 of the Constitution of the United States:

> "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in

the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Amendment 14, Section 1 of the Constitution of the United States:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Article I, Section 10 of the Constitution of the United States:

"No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder; ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility."

There has never been shown any basis whatsoever for this Act which would allow the disregarding of the foregoing principles.

The District Court for the Nineteenth Judicial District in and for the Parish of East Baton Rouge, State

of Louisiana, held the Act to be unconstitutional as being in derogation of the Constitution of the United States (and that of the State of Louisiana). The original decision of the Supreme Court of the State of Louisiana was rendered on December 10, 1956, but after an application for rehearing, timely filed, and a brief supporting same had been filed, plus an *amicus curiae* brief filed by two attorneys representing two major oil companies, on January 21, 1957, the Supreme Court of Louisiana in a *per curiam* decision stated as follows:

> "PER CURIAM.
>
> "In briefs filed on application for rehearing issue was taken to certain statements in our opinion in this case concerning vested rights, impairment of the obligation of contracts, and the validity of the lease between Belle Isle and Sun Oil.
>
> "Upon further consideration we have decided that a discussion of these issues is unnecessary to a decision in this case, and we now prefer to rest our decision solely on the basis that Act 513 of 1952 is constitutional because it is a valid exercise by the state of its police power."

A complete copy is also appended hereto as Exhibit "A".

The organ of the Court who wrote the original opinion rendered on December 10, 1956, did not concur in this view but indicated that he adhered to the original opinion.

The fundamental question, therefore, presented by this Appeal is whether this Act is a valid exercise of the police power of the State of Louisiana.

For the sake of brevity, certain other background statements which could be made herein, will be made in the following section (Statement of the Case). The said section shall, in all respects, be considered as being a part of this section for the purpose of consideration by this Honorable Court.

STATEMENT OF THE CASE

A petition under the provisions of Act 513 of 1952 was filed by 50 or more persons who hold themselves out as being some of the owners in indivision of the land which was the subject of the petition and which is located in St. Mary Parish, Louisiana. Sun Oil Company and its lessor (Belle Isle Corporation) of an undivided interest in the land which was the subject of the petition for leasing, filed proceedings to finally obtain a permanent injunction preventing any further proceedings under the said Act. It was the contention of these parties that the said Act violated provisions of the Constitution of the United States (and the State of Louisiana) as set forth in the foregoing section. These contentions were raised in the original petition filed by the plaintiffs in the District Court for the Nineteenth Judicial District in and for the Parish of East Baton Rouge, State of Louisiana (R. 9, *et seq.*). It was, of course, argued accordingly and the District Judge rendered his decision holding the Act unconstitutional under both the Constitution of the United States (and that of the State of Louisiana) (R. 37, *et seq.*) and accordingly so held in the formal judgment (R. 42, *et seq.*). The same contentions were again urged in the Supreme Court of Louisiana and were specifically mentioned in the original decision of the said Supreme Court entered December 10, 1956 (R. 53, *et seq.*). They were further raised in the

application for rehearing as shown by the *per curiam* decision dated January 21, 1957, modifying the original decision (R. 61).

It is the position of the appellant that there is no evidence whatsoever in the record that Act 513 of 1952 could in any way be classified as being for the conservation of oil, gas, or other minerals, which would justify the exercise of the police power and that no other basis, other than convenience to some co-owners, has ever been shown. The fundamental question then to be answered, as hereinbefore set out, is whether this act is a valid exercise of the police power of the State of Louisiana. Any owner of an undivided interest in land affected by this Act is being deprived of his right to freely contract without being given any compensation therefor. Any such landowner is forced to allow his land to be leased and pay a ten per cent (10%) commission on all lease revenue to the State Mineral Board of the State whether he so desires or not. Secondly, it is the law of the State of Louisiana that as between the lessor and the lessee a lease of an undivided interest is valid. This gives to the lessee of the said interest the right to attempt to obtain leases from all of the rest of the owners of undivided interests, their acquiescence, cooperation, or the cooperation of other lessees of undivided interests, so that he can drill or explore the subject land without opposition. When a lessee acquires such a lease, he is purchasing the right to attempt to secure such other leases, acquiescence, or cooperation for the duration of the lease. *This is a valid contractual right sometimes of tremendous value.* Sun Oil Company is the holder from Belle Isle Corporation of a lease of an undivided interest in the land involved in the petition which gave rise to this suit.

Belle Isle Corporation has specifically admitted that this lease is effective (Paragraph 4 of the original petition filed herein, R. 10) and we quote:

> "That the said lease, as amended, among other lands, presently affects the following described property owned by Belle Isle Corporation in St. Mary Parish, Louisiana, to-wit:
>
> "All of the undivided interest of Belle Isle Corporation in that portion of irregular Section Nineteen (19), Township Seventeen (17) South, Range Eleven (11) East lying East of Doctor's Bayou, Southwestern Land District of Louisiana, and being a portion of what is known as the 'Belle Isle' grant or concession, St. Mary Parish, Louisiana."

The lessee in the instant situation, Sun Oil Company, would be deprived of this valid contractual right without any compensation therefor because the lease by the State Mineral Board, under the provision of this Act, would then bind "all" of the co-owners of the subject property.

We do not feel that it is necessary to go into any great detail as to the substantial nature of the federal constitutional questions presented under the principles of *Zucht* v. *King, supra.*

The Supreme Court of Louisiana has squarely based its decision on the police power of the State of Louisiana. For the said State of Louisiana to exercise its police power, the following must be present:

(1) An emergency must be met by the subject legislation.

(2) A legitimate end, not for the mere advantage of particular individuals, but for the protection of a basic interest in society.

(3) The legislation in question gives relief appropriate to the emergency.

(4) Conditions in the legislation must not be unreasonable.

(5) If it is to meet a temporary condition, it must be only for the exigency which called it forth.

(William L. Prosser's "Selected Essays on Constitutional Law", Vol. II, pages 374-5).

There is, however, certainly no evidence of the meeting of such requirements in the record.

Statutes involving conservation matters have been held or recognized as constitutional by this Honorable Court many times in the past and we cite only a few, to-wit:

Ohio Oil Co. v. *Indiana*, 177 U.S. 190, 20 Sup. Ct. 576, 44 L. Ed. 729 (1900);
Walls v. *Midland Carbon Co.*, 254 U. S. 300, 41 Sup. Ct. 118, 65 L. Ed. 276 (1920);
Thompson v. *Consolidated Gas Utilities Corporation*, 300 U. S. 55, 57 Sup. Ct. 364, 81 L. Ed. 510 (1937);
Palmer Oil Corp. v. *Amerada Petroleum Corp.*, 343 U. S. 390, 72 S. Ct. 842, 96 L. Ed. 1022 (1952);
Hunter Co., Inc. v. *McHugh*, 202 La. 97, 11 So. (2d) 495, 320 U. S. 222, 64 Sup. Ct. 19, 88 L. Ed. 5 (1942).

There is, however, no language in the said Act 513 of 1952, no matter how tortured, which could be said to indicate that the statute is for the purpose of conserving and regulating the production of minerals underlying the surface of the State of Louisiana for the public good nor is there one scintilla of evidence in the record that such is the purpose. No other reason,

other than convenience to some co-owners, has ever been shown to be the purpose and this most assuredly is not "for the protection of a basic interest in society".

The substantial federal constitutional questions involved are squarely presented by the *per curiam* decicision, *supra,* as the validity of the statute is based specifically upon the said police power of the State of Louisiana and upon no other basis.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this appeal should be noted and the opportunity to submit briefs on the merits and to present oral argument should be given to the appellant.

Respectfully submitted,

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EXHIBIT "A"

Monday, Jan. 21, 1957

SUPREME COURT OF LOUISIANA

No. 42609

SUN OIL COMPANY, ET AL.

v.

STATE MINERAL BOARD,
MISS ALICE J. MILLER, INTERVENOR

On Application for Rehearing

PER CURIAM.

In briefs filed on application for rehearing issue was taken to certain statements in our opinion in this case concerning vested rights, impairment of the obligation of contracts, and the validity of the lease between Belle Isle and Sun Oil.

Upon further consideration we have decided that a discussion of these issues is unnecessary to a decision in this case, and we now prefer to rest our decision solely on the basis that Act 513 of 1952 is constitutional because it is a valid exercise by the state of its police power.

The application for rehearing is denied.

McCaleb, J., is of the belief that all views expressed in the original opinion, to which he adheres, are responsive to the issues presented in the case.

EXHIBIT "B"

Monday, Dec. 10, 1956

SUPREME COURT OF LOUISIANA

No. 42609

SUN OIL COMPANY, ET AL.

v.

STATE MINERAL BOARD,
MISS ALICE J. MILLER, INTERVENOR

Appeal from the Nineteenth Judicial District Court in and for the Parish of East Baton Rouge, Honorable G. Caldwell Herget, Judge.

McCALEB, Justice:

This suit involves the constitutionality of Act 513 of of 1952 (R. S. 30:181-188) which authorizes the State Mineral Board to execute mineral leases on lands owned in indivision by 500 or more persons for the benefit of all the owners thereof, when any 50 or more of the co-owners of said property have petitioned the Board to lease the subject property. Upon receiving such a request the Board has authority to follow the same procedure used by it in the leasing of state lands for mineral development. The lease shall not provide any less than a ⅛ royalty for the co-owners of the land and, when signed by the Board, shall be binding upon all the co-owners. The Act allows a 10% deduction by the Board to defray the costs and expenses incident to its duties under the Act.

Pursuant to the provisions of Act 513 of 1952, a petition was filed by 50 or more persons alleged to be co-owners in indivision, along with more than 500 other persons, of certain property described in the petition as:

> "All of that portion of Section 19, Township 17 South, Range 11 East, lying east of Doctor's Bayou in St. Mary Parish, Louisiana, containing 1218.75 acres."

The State Mineral Board proceeded to advertise for leases on said land and, on December 14, 1953, Belle Isle Corporation and Sun Oil Company filed this suit, seeking a temporary restraining order and a preliminary and permanent injunction against the Board to prevent it from proceeding under Act 513 of 1952. They aver in their petition that Belle Isle Corporation, as lessor, entered into a mineral lease with Sun Oil Company, as lessee, that affects, among other lands, the property sought to be leased by the State Mineral Board and charge that such leasing by the Board would be violative of various provisions of the Federal and Louisiana Constitutions, including the due process and equal protection clauses and the prohibitions against ex post facto laws and laws impairing the obligation of contracts.

A temporary restraining order was granted along with a rule to show cause why a preliminary injunction should not issue. Prior to a hearing on the rule, Miss Alice J. Miller and Mrs. Therese G. Rainold, two of the co-owners who signed the request that the State Mineral Board lease the above-described land, intervened in the case. They allege the lease between Belle Isle Corporation and Sun Oil Company to be an absolute nullity insofar as the land in question is concerned and further assert that Belle Isle Corporation and Sun Oil Company, as mineral lessor and lessee, respectively, of large tracts of land adjacent to the land in question, are seeking to prevent the

leasing of the latter property by the State Mineral Board in order to be in a position to drain the minerals from under said property.

After several continuances, during which time the temporary restraining order was kept in effect, a hearing was had on the rule for a preliminary injunction. By agreement, the hearing was to be considered as a hearing for a permanent as well as for a preliminary injunction.

The trial judge, finding Act 513 of 1952 to contravene the Fifth and Fourteenth Amendments of the Constitution of the United States and Article I, Section 2 of the Louisiana Constitution, in that it affected the contract rights of Belle Isle Corporation and Sun Oil Company, declared said Act unconstitutional and permanently enjoined the State Mineral Board from proceeding thereunder. From this Judgment only Alice J. Miller, one of the intervenors, has appealed.

Before considering the constitutionality vel non of Act 513 of 1952, it will first be necessary to dispose of certain preliminary matters.

The trial judge was of the opinion that intervenors could not make a collateral attack upon the lease contract existing between co-plaintiffs in view of the fact that they had no legal interest therein.

While this ruling was not prejudicial to appellant since the trial judge went on to decide the case on constitutional grounds, we feel it to be so manifestly erroneous as to merit comment. Article 390 of the Code of Practice provides that, "in order to be entitled to intervene, it is enough to have an interest in the success of either of the parties to the suit, or an interest opposed to both". It is quite obvious that the instant intervenors have a most substantial interest in the success of defendant State Mineral Board in this proceeding since, unless Act 513 of 1952 is held to be constitutional and the Board permitted to

lease their property, they will, for all practical purposes, be denied the opportunity of having mineral exploration conducted on the land. And it follows that they are entitled to resist the demands of co-plaintiffs, who are asserting that, by reason of their lease contract, the statute is rendered null. Thus, we do not hesitate in declaring that appellant had sufficient interest to intervene in this proceeding[1] and to assail the validity of co-plaintiffs' lease.

We next consider the precise legal effect of the lease between Belle Isle Corporation and the Sun Oil Company which was executed May 1, 1935. Belle Isle Corporation, as owner of an undivided 13/144 plus an undivided 423/864 of an .045798 interest in the land described earlier in this opinion, entered into a mineral lease with the Sun Oil Company covering this undivided interest and also including certain other lands in the vicinity. There has been no exploration by the lessee of the land involved in this litigation—it is stipulated that there has been production on some of the other lands included in the lease.

The trial judge found the lease of this undivided interest to be valid as to the parties thereto, rejecting appellant's contention that the lease, being impossible of performance, is null and void under the provisions of Article 1891 of the Civil Code.[2]

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[1] And, it might be added, she could have appealed from the lower court judgment even had she not intervened since Article 571 of the Code of Practice gives the right of Appeal "not only to those who were parties to the cause in which a judgment has been rendered against them, but also to third persons not parties to such suit, when such third persons allege that they have been aggrieved by the judgment".

[2] This article reads as follows: "The object of a contract must be possible by which is meant physically or morally possible. The possibility must be determined, not by the means or ability of the party to fulfill his agreement, but by the nature of the thing which forms the object of it."

This Court has recognized that, as between the parties, the lease of mineral interests owned in indivision with others is valid since one may validly lease property belonging to another. Spence v. Lucas, 138 La. 763, 70 So. 796; Gulf Refining Co. v. Carroll, 145 La. 299, 82 So. 277 and Articles 2681 and 2682 of the Civil Code.

However, it is well established in the cited cases and in the many authorities following them (see Amerada Petroleum Corporation v. Reese, 195 La. 359, 196 So. 558 and cases there cited and Amerada Petroleum Corporation v. Murphy, 204 La. 721, 16 So. (2d) 244) that such a lease is null insofar as the other co-owners are concerned and a co-owner may oppose any attempt by his co-owners or by a lessee of his co-owners, to exploit the common property for oil and gas, the theory being that co-owners are owners par mi et par tout, of part and of the whole, and no co-owner has the exclusive right to any determinate part of the common property.[3]

With this brief background, we will examine co-plaintiffs' contention that the leasing of the land in question by the State Mineral Board would obliterate the lease existing between them and would thereby effect an unconstitutional impairment of contract obligations and deprivation of vested rights.

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[3] But compare United Gas Public Service Co. v. Arkansas-Louisiana Pipe Line Co., 176 La. 1024, 147 So. 66, which may not appear to be entirely concordant. There, the Court upheld the trial judge's refusal to grant an injunction to prevent the extraction of gas by a mineral lessee of one of the co-owners since such drilling was apparently necessary to prevent the minerals from being drained off by the other co-owner (plaintiff), who had several producing gas wells adjourning the area in controversy. This decision is founded on the premise that a co-owner who is guilty of unlawful drainage of minerals may not resort to the equitable remedy of injunction against his co-owner who is engaged in drilling offset wells to protect the common property from exploitation. Thus, the case is distinguishable from Gulf Refining Co. v. Carroll on its facts and is not in conflict therewith.

Conceding that the action proposed by the State Mineral Board under Act 513 of 1952 would extinguish the lease between co-plaintiffs, insofar as it covers the land above described, we find it difficult to perceive that any obligation under the lease will be impaired or that a valid right will be divested.

The most accurate description of co-plaintiffs' lease is that it was an executory contract dependent for its operation upon a suspensive condition, viz., that Sun Oil Company, as lessee, obtain leases or at least acquiescence from every other co-owner of the land in question.[4] Neither the leases nor the consent have ever been procured and it is clear that no obligation has ever come into being. Article 2043 of the Civil Code provides:

> "The obligation contracted on a suspensive condition, is that which depends, either on a future and uncertain event, or on an event which has actually taken place, without its being yet known to the parties.
>
> "In the former case, the obligation can not be executed till after the event; in the latter, the obligation has its effect from the day on which it was contracted, but it can not be enforced until the event be known."

Thus, there is no existing contractual obligation of either plaintiff that can be impaired by the machinery of Act 513 of 1952—for it is clear that the parties neither contemplated that Belle Isle Corporation would be obliged, as lessor, to deliver the leased premises until Sun Oil Company obtained a like lease or consent from each of the

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[4] Compare this situation with Article 738 of the Civil Code which states: "The coproprietor of an undivided estate can not impose a servitude thereon, without the consent of his coproprietor. "The contract of servitude, however, is not null; its execution is suspended until the consent of the coproprietor is given."

remaining 800 odd known co-owners (see Buillard v. Davis, 201 La. 116, 9 So. (2d) 479) nor that Sun Oil Company would be obliged to develop the property owned in indivision.

Nor do we discover any substance in the argument that the Act operates as a divestiture of vested rights. The lease in question vests no rights in either party since it confers neither rights nor obligations until the happening of the suspensive condition previously discussed for, as above stated, prior to this time Belle Isle Corporation could not deliver possession of the premises and Sun Oil Company is precluded from going on the land to explore for minerals. Gulf Refining Company v. Carroll, supra.

The contention of co-plaintiffs that the statute operates to destroy their vested rights is based on certain observations made by the court in Spence v. Lucas and Gulf Refining Co. v. Carroll to the effect that, whereas leases or property owned in indivision are ineffective unless all co-owners give their consent, they are valid and enforceable between the subscribing parties. An examination of the cited cases shows that the remarks relied on were appropriate to the facts involved in Spence v. Lucas, where the lessor executed a mineral lease of the *whole* property although she only owned an undivided one-half interest therein. Hence, the court rightly concluded there that, although the lease was invalid and unenforceable as to the lessor's co-owners, it was binding on the lessor under Article 2682 of the Civil Code.[5]

On the other hand, the mineral lessor in Gulf Refining Co. v. Carroll did not lease the property of another but only his own undivided one-half interest in the property. Consequently, the oil company in that case (like this one) was charged with knowledge that delivery was not contem-

[5] It provides: "He who lets out the property of another, warrants the enjoyment of it against the claim of the owner".

plated and could not be effected without the consent of the other co-owner. Therefore, the statement of the court that the lease was a valid contract and enforceable between the parties (which, incidentally, was obiter dicta) was incorrect as that observation was founded on the principle, inapposite to the facts there presented, that a lease of the property of another, while null as to the owner, is binding on the parties to the contract.

The lease in the case at bar had no practical effect whatsoever in view of the manifest improbability that Sun Oil Company would have been able to obtain the consent of the legion of other co-owners prior to the expiration of the time when it could go on the land and explore. It was stipulated at the trial that the lease (which has not been offered in evidence) is dated May 1, 1935 and comprises lands owned by Belle Isle Corporation other than its fractional interest in the property involved herein and it was further stipulated that this lease has been kept alive by production obtained from part of the leased property. It is obvious, we think, that the production secured from the other property wholly owned by Belle Isle Corporation could not serve to hold the lease as to the land in the instant suit for the simple reason that the lease has never become effective as to that property and could not have had any legal effect, even as between the parties thereto, unless the consent of the various co-owners had been obtained within the primary term, which expired over fifteen years ago.[6]

Indeed, when we examine the respective positions occupied by Belle Isle Corporation and Sun Oil Company in these proceedings, we are impelled to conclude that they are strikingly anomalous. The former, as a co-owner of the land involved in this litigation, is vigorously assail-

[6] We assume that the lease is an ordinary mineral lease having a primary term of five years.

ing the constitutionality of an act that provides the only practical method by which it can realize any profit from the minerals that may underly this land. And Sun Oil Company, in its strenuous effort to maintain the existence of the nugatory lease between it and Belle Isle Corporation affecting this property, is opposing the very act which would give it an opportunity to acquire a valid lease on the property which they purport to be so anxious to explore.

Finally, even were we to assume the present existence of private, though nebulous, contractual rights between Belle Isle Corporation and Sun Oil Company, it is patent that such rights are subordinate to the valid exercise by the state of its police powers. And it has long since been established that the state's police powers justify measures for the regulation of production of oil and gas and for the conservation of these valuable deposits. Ohio Oil Company v. Indiana, 177 U. S. 190, 20 S. Ct. 576, 44 L. Ed. 729. It was on this basis that our present conservation statute, Act 157 of 1940 (now R. S. 30:1, et seq.), has been held to be nonviolative of any provisions of either the State or Federal Constitution (see Hunter Co. v. McHugh, 202 La. 97, 11 So. (2d) 495, appeal dismissed for want of a substantial Federal question, 320 U. S. 222, 64 S. Ct. 19, 88 L. Ed. 5, and Crichton v. Lee, 209 La. 561, 25 So. (2d) 229) and it is well settled that, where valid orders of the Commissioner of Conservation are in conflict with private contractual rights, the latter must yield and are superseded by the former. Everett v. Phillips Petroleum Co., 218 La. 835, 51 So. (2d) 87 (and cases cited therein) and Smith v. Holt, 223 La. 821, 67 So. (2d) 93.

The only function of Act 513 of 1952 is to provide a method for the recovery of minerals in situations where, due to the large number of owners in indivision, exploration and production would otherwise be a practical impossibility. Such a measure, designed to benefit the state and all the co-owners affected, is clearly a valid exercise of the

police power, much the same as is an order of the Commissioner of Conservation establishing compulsory drilling units, and private rights succumb thereto.

The Judgment appealed from is reversed and the suit is dismissed at plaintiff's costs.

Hamiter, J., concurs in the decree.

PROOF OF SERVICE

I, Thomas Cooney Hall, one of the attorneys for Sun Oil Company, appellant herein, and a member of the bar of the Supreme Court of the United States, hereby certify that on the ..... day of March, 1957, I served copies of the foregoing Jurisdictional Statement in accordance with Rule 15 of the Supreme Court of the United States on the several parties thereto as follows:

1. On the State Mineral Board of the State of Louisiana by (a) mailing a copy in a duly addressed envelope with first-class postage prepaid, to its attorney of record, the Attorney General of the State of Louisiana, State Capitol Building, Baton Rouge, Louisiana, attorney for the said State Mineral Board; (b) mailing a copy in a duly addressed envelope with first-class postage prepaid, to its attorney of record, John L. Madden, Esq., Assistant Attorney General of the State of Louisiana, State Capitol Building, Baton Rouge, Louisiana, attorney for the said State Mineral Board; and (c) mailing a copy in a duly addressed envelope with first-class postage prepaid to C. J. Bonnecarrere, Esq., Secretary of the said State Mineral Board, State Capitol Building, Baton Rouge, Louisiana.

2. On the intervenor, Alice J. Miller, by mailing a copy thereof in a duly addressed envelope with first-class postage prepaid to her attorney of record as follows: James C. Henriques, Jr., Esq., American Bank Building, New Orleans, Louisiana, attorney for Alice J. Miller.

3. On Mrs. Therese Gonsoulin Rainold by mailing a copy in a duly addressed envelope with first-class postage prepaid to her attorney of record, as follows: Robert R. Rainold, Esq., Richards Building, New Orleans, Louisiana, attorney for Mrs. Therese Gonsoulin Rainold.

4. On Belle Isle Corporation by mailing a copy in a duly addressed envelope with first-class postage prepaid to its attorney of record as follows: Isaac S. Heller, Esq., National Bank of Commerce Building, New Orleans, Louisiana, attorney for Belle Isle Corporation.

THOMAS COONEY HALL,
Attorney for Appellant, Sun Oil Company,
515 Weber Building,
Lake Charles, Louisiana.

JUN 1 2 19
JOHN T. FEY, C

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 866

SUN OIL COMPANY, *Appellant*,

v.

STATE MINERAL BOARD, *Appellee*,
MISS ALICE J. MILLER, *Intervenor-Appellee*.

Appeal to the Supreme Court of the United States From the Supreme Court of Louisiana

PETITION FOR REHEARING OF *PER CURIAM* JUDGMENT DATED MAY 20, 1957 DISMISSING APPEAL FOR LACK OF A SUBSTANTIAL FEDERAL QUESTION

ALVIN O. KING,
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PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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IN THE

Supreme Court of the United States

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STATE MINERAL BOARD, *Appellee*,
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Appeal to the Supreme Court of the United States From the Supreme Court of Louisiana

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PETITION FOR REHEARING OF *PER CURIAM* JUDGMENT DATED MAY 20, 1957 DISMISSING APPEAL FOR LACK OF A SUBSTANTIAL FEDERAL QUESTION

By *Per Curiam* decision dated May 20, 1957, this appeal has been dismissed and the said decision is quoted herewith:

> " '*Per Curiam:* The appeal is dismissed for want of a substantial federal question.' "

It is felt that this decision was certainly not based on the premise that the case comes under the rule of

Equitable Life Assurance Society of the United States v. *Brown,* 187 U. S. 308, 314, 23 S. Ct. 123, 125, 47 L. Ed. 190, 193 (1902) as certainly the question is a new and novel one and further argument will be based on the assumption that the Court felt that there was no substantial federal question involved under the principles of *Zucht* v. *King,* 260 U. S. 174, 176, 177, 43 S. Ct. 24, 25, 67 L. Ed. 194, 198 (1922).

It is further felt that perhaps because the writers of the jurisdictional statement were so completely convinced that serious federal constitutional questions were so squarely presented by the *Per Curiam* decision of the Supreme Court of the State of Louisiana, dated January 21, 1957 (Exhibit "A" of the jurisdictional statement herein) that perhaps certain aspects of the case were not sufficiently emphasized.

Up until the original opinion of the Supreme Court of Louisiana in this case, dated December 10, 1956 (Exhibit "B" of the jurisdictional statement herein) there was no question that the lease of an undivided interest was in all respects a thing of value. This principle was established by the cases of *Spence* v. *Lucas,* 138 La. 763, 70 So. 796 (S. Ct. 1916) and *Gulf Refining Co. of Louisiana* v. *Carroll, et al.,* 145 La. 299, 82 So. 277, (S. Ct. 1919). Leases of undivided interests are a merchantable commodity, frequently quite valuable, and they are being constantly dealt with in the oil and gas business. This has been universally recognized and constantly used. It was felt, and still is, that certain statements made as to the nature of a lease of an undivided interest in the said original opinion were an incorrect statement of the law. It is further felt that the *Per Curiam* decision fully re-instated the law as it stood prior to the December 10, 1956 decision and

this is the general view. The exact nature of a lease of an undivided interest is a vital one to the oil and gas industry, but it is of course not subject as such to the decision of this Honorable Court. The deprivation, however, of such a valid, contractual right, whatever its exact nature, without compensation is clearly an impairment of contract specifically forbidden by the Constitution of the United States and it is respectfully submitted that further opportunity to present this argument should be given to your appellant.

It is further submitted that landowners are being deprived of their right to freely contract for no justifiable reason which would allow their constitutional rights of due process and equal protection of the laws to be disregarded. Let us assume in this situation that there are 501 owners and that one of the owners owns ninety-nine per cent of the interest in the subject property. Except for some valid reason for the public good, what possible justification is there for allowing any 50 of the 500 owners of the one per cent ownership to deprive the owner of ninety-nine per cent of his right to freely contract or not contract? This obviously is allowing a very small portion of a small tail to wag a large dog for an inequitable unconstitutional reason. Other than mere convenience for some owners of undivided interests, there has never been any valid basis urged for this Act. *Convenience* has been the only real reason ever given. This most assuredly is not sufficient and we emphasize the fact that, although this statute on its face could be considered as applying to very few situations and being thereof of little public importance, actually the contrary is true. The statute is patently not giving "equal protection of the laws" to owners of interests in land where there are 500 or more owners. The principle that is applicable

here was established by the trailblazer case of *Yick Wo* v. *Peter Hopkins*, 118 U. S. 356, 6 S. Ct. 1064, 30 L. Ed. 220, (S. Ct. 1886) and it has been consistently followed. Insofar as covering the instant situation, it is particularly well expressed in the case of *State* v. *Old Tavern Farm, Inc.*, 133 Me. 468, 180 A. 473, 477, 101 A. L. R. 810, (Maine Supreme Judicial Court 1935) to-wit:

> "The rights of every person must stand or fall by the same rule of law that govern every other member of the body politic under similar circumstances, and every partial or private law which directly proposes to destroy or modify personal rights, or does the same thing by restricting the privileges of certain classes, and not of others, where there is no public necessity therefor, is unconstitutional and void."

It should be pointed out that if the validity of this Act is upheld as being a valid exercise of the police power of the State of Louisiana, there is no reason why a similar act should not be passed where there are a hundred or more co-owners and, going to the extreme, why there should not be an act passed where there are two or more owners. Such an idea is obviously abhorrent to the usual owner in indivision in the State of Louisiana who certainly would not desire to lose control of the right to lease his interest in land. Obviously an owner of a part interest in land is being deprived of a valuable right which an owner of the entire interest still has. This is definitely a restriction and invasion of the rights of owners of undivided interests as a class *without any public necessity.*

It is a fundamental principle of Louisiana law that no owner in indivision has to remain an owner in indivision. We quote Louisiana Civil Code Article 1308, to-wit:

"The action of partition will not only lie between co-heirs and co-legatees, but between all persons who hold property in common, from whatever cause they may hold in common."

We quote this fundamental principle and further set out the basic provisions which allow the owner to either have the property divided in kind or to have it sold at public auction (in certain situations) to liquidate the property.

Louisiana Civil Code Article 1322—Partition by mutual agreement.

"If all the heirs are of age and present or represented, the partition may be made in such form and by such an act as the parties interested agree upon."

Louisiana Civil Code Article 1323—Judicial partition.

"If, on the contrary, all the heirs are not present, if there be among them minors or persons interdicted, or if all the heirs of age and present do not agree to the partition or on the manner of making it, it shall be made judicially and in the form hereafter prescribed.

Louisiana R. S. 13:4971—Partition by licitation; co-owners absent and unrepresented, residence unknown, etc.

"Whenever any plaintiff shall own an undivided interest in real property situated in the state and shall be unwilling to continue to own the same in indivision, and when a record owner or owners of any interest or interests in the property shall be absent from and not represented in the State of Louisiana, or his or their residences shall be unknown to the plaintiff and have not been ascertained although the plaintiff declares under oath that he has made diligent effort to ascertain same,

or he or they shall be dead and the party desiring the partition shall not know who are the heirs of any such decedent, or when the party desiring the partition shall not know whether the record co-owner is or is not dead, the plaintiff co-owner being unwilling to remain in indivision may obtain a partition by licitation of the property in question regardless of its divisibility. Service on the absent unlocated, or unknown defendant or defendants, may be obtained by service on an attorney at law appointed to defend the suit for such defendant or defendants and by affixing copies of the petition and citation on the door of the room where the court in which the suit shall be pending is held, or on a bulletin board located near the entrance to the said court room."

The statute last cited would be particularly applicable to a situation where there were 500 or more owners as it furnishes a workable way to achieve the desired result. Owners in indivision do have this fundamental right to extricate themselves from an unwieldy situation if they so desire. This is being pointed out to show that there is not even a real practical need for this statute, and on the other hand, the rights of individual owners in indivision to contract or not contract as they see fit is being unconstitutionally taken from them. At the same time they are also being unconstitutionally forced to pay a ten per cent commission to the State Mineral Board for doing something that they may have no desire to do. For these reasons, it is additionally respectfully submitted that further opportunity to present this argument should be given to your appellant.

It is therefore respectfully submitted that a rehearing should be granted, that this appeal should be noted, and that the opportunity to submit briefs on the merits

and to present oral argument should be given to appellant.

Respectfully submitted,

ALVIN O. KING,
THOMAS COONEY HALL,
515 Weber Building,
Lake Charles, Louisiana,
Attorneys for Appellant.

KING, ANDERSON & SWIFT,
515 Weber Building,
Lake Charles, Louisiana,
Of Counsel.

Certificate of Counsel

I hereby certify that the foregoing Petition for Rehearing of *Per Curiam* Judgment Dated May 20, 1957 Dismissing Appeal for Lack of a Substantial Federal Question is presented in good faith and not for delay.

THOMAS COONEY HALL.

Dated: Lake Charles, La., June , 1957.

PROOF OF SERVICE

I, THOMAS COONEY HALL, one of the attorneys for Sun Oil Company, appellant herein, and a member of the bar of the Supreme Court of the United States, hereby certify that on the ..... day of ....., 1957, I served copies of the foregoing Petition for Rehearing of *Per Curiam* Judgment Dated May 20, 1957 Dismissing Appeal for Lack of a Substantial Federal Question on the several parties thereto as follows:

1. On the State Mineral Board of the State of Louisiana by (a) mailing a copy in a duly addressed envelope with first-class postage prepaid, to its attorney of record, the Attorney General of the State of Louisiana, State Capitol Building, Baton Rouge, Louisiana, attorney for the said State Mineral Board; (b) mailing a copy in a duly addressed envelope with first-class postage prepaid, to its attorney of record, John L. Madden, Esq., Assistant Attorney General of the State of Louisiana, State Capitol Building, Baton Rouge, Louisiana, attorney for the said State Mineral Board; and (c) mailing a copy in a duly addressed envelope with first-class postage prepaid to C. J. Bonnecarrere, Esq., Secretary of the said State Mineral Board, State Capitol Building, Baton Rouge, Louisiana.

2. On the intervenor, Alice J. Miller, by mailing a copy thereof in a duly addressed envelope with first-class postage prepaid to her attorney of record as follows: James C. Henriques, Jr., Esq., American Bank Building, New Orleans, Louisiana, attorney for Alice J. Miller.

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4. On Belle Isle Corporation by mailing a copy in a duly addressed envelope with first-class postage prepaid to its attorney of record as follows: Isaac S. Heller, Esq., National Bank of Commerce Building, New Orleans, Louisiana, attorney for Belle Isle Corporation.

.....,

THOMAS COONEY HALL,
Attorney for Appellant, Sun Oil Company,
515 Weber Building,
Lake Charles, Louisiana.

No. 866. SUN OIL CO. *v.* STATE MINERAL BOARD ET AL. Appeal from the Supreme Court of Louisiana. *Per Curiam:* The appeal is dismissed for want of a substantial federal question. *Alvin O. King* and *Thomas Cooney Hall* for appellant. Reported below: 231 La. 689, 92 So. 2d 583.

No. 618, Misc. TOUHY *v.* ILLINOIS. Appeal from the